

# HSA CUSTODIAL ACCOUNT AGREEMENT

The Account Holder (the "Depositor") whose name appears on the executed HSA Adoption Agreement is establishing a health savings account with GATEWAY BANK, F.S.B. (the "Custodian") under Section 223(a) of the Internal Revenue Code (the "Code") to provide for the Account Holder's qualified medical expenses as defined under Section 223(d)(2) of the Code. The Plan Service Provider, BENEFIT ADMINISTRATORS, (the "PSP") is hereby authorized to act as the agent for Depositor and the Custodian in performing certain administrative and record keeping services. The Depositor, the Custodian and the PSP make the following agreement:

## Article I - Establishment of Account

The Custodian may accept cash contributions on behalf of the Depositor during a tax year of the Depositor for the health savings account (the "HSA Account") as provided herein. The total cash contributions are limited as described in the HSA Adoption Agreement. The cash contributions will be deposited by the Custodian into an interest-bearing deposit account at the Custodian, which will be in the form of a sub-account (the "Sub-Account") of a master account (the "Master Account"). The Depositor will be the beneficial owner of the Sub-Account, and the Master Account will be held in the name of PSP on behalf of the Depositor and all other related depositors and beneficial owners of Sub-Accounts.

## Article II - Non-Forfeitability

The Depositor's interest in the balance in the HSA Account is nonforfeitable.

## Article III - Investment of Funds

Unless otherwise agreed by the Custodian and only at the request of the Depositor, the custodial funds will be placed in an interest-bearing time deposit account at the Custodian. For record keeping and related purposes, the deposit account may be in the form of a Sub-Account of a Master Account in the name of the PSP as administrator for Depositor and other depositors into which various custodial funds received pursuant to similar Health Savings Accounts will be placed, but will be separately accounted for and not commingled with other funds.

## Article IV - Beneficiaries

If the Depositor dies before his or her entire interest has been distributed and if the beneficiary is the surviving spouse, the surviving spouse shall become the HSA account holder. Otherwise, the account balance will be distributed to the individuals listed in the beneficiary election form executed by the Depositor.

## Article V - IRS Reporting Requirements

1. The Depositor agrees to provide the PSP or the Custodian with information necessary for the Custodian to prepare any reports required under section 223(h).
2. The Custodian, using the services of the PSP, agrees to submit reports to the Internal Revenue Service and the Depositor as prescribed by the Internal Revenue Service.

## Article VI - Amendments

This agreement will be amended automatically from time to time without any action on the part of Depositor, the PSP or the Custodian to comply with the provisions of the Code and related regulations. Such amendments may be made retroactively to the later of the effective date of this agreement or the effective date of any future legal requirements. Other amendments may be made with the consent of the persons whose signatures appear below, and will become effective upon execution of such amendments.

## Article VII - Responsibilities of the Custodian

1. The Custodian shall maintain the custodial account, distinct from all other custodial accounts, for the exclusive benefit of Depositor and Depositor's beneficiaries and shall be responsible for performing only such services as are described in this agreement. Notwithstanding the foregoing, the Custodian will deposit all the custodial funds into Sub-Accounts of a Master Account maintained in the name of the PSP at the Custodian as provided herein, so long as the assets are not co-mingled, accurate records are maintained as to the interest of each Depositor in the Master Account and his or her respective Sub-Account, and each Sub-Account is separately insured under applicable regulations of the Federal Deposit Insurance Corporation.
2. The Sub-Account shall be an interest-bearing time deposit maintained at the Custodian, which shall bear interest at such rate as may be established by the Custodian from time to time in accordance with applicable law. The Custodian shall have

no responsibility or liability for any investment results obtained as a result of the determination to invest the funds in the interest-bearing Sub-Account or for any loss resulting from any action taken by the Custodian at the direction of Depositor or any loss resulting from any failure to act because of the absence of directions from Depositor.

3. Neither the PSP nor the Custodian shall be responsible for inquiring into the nature or amount of any contribution made by Depositor, or into the amount or timing of any distribution requested by Depositor, or whether such contributions or distributions comply with the Code. Depositor shall have full responsibility for any tax or investment consequences of all contributions to and distributions from the custodial account.

4. Depositor agrees to indemnify and hold harmless, and to defend the Custodian and the PSP against any and all claims arising from and liabilities incurred by reason of any action taken by the Custodian and the PSP in good faith pursuant to this agreement.

#### **Article VIII - Duties of the PSP**

1. Depositor and the Custodian appoint the PSP as agent of Depositor and the Custodian to take certain actions as described herein. In particular, the PSP is authorized to:

- make withdrawals from the Depositor's personal bank account as designated by Depositor, or to have amounts deducted from Depositor's salary with his or her employer, on a periodic basis as may be authorized to pay medical insurance premiums, to fund the HSA Account established hereunder and to pay certain administrative expenses;
- collect such funds in a collection depository account maintained by the PSP at the Custodian or such other bank or financial institution as the PSP may select;
- make appropriate payments to health providers for the benefit of Depositor as authorized by Depositor subject to option being offered by Custodian;
- transfer funds to the Custodian to fund the HSA Account or Sub-Account established hereunder at the Custodian;
- receive requests for withdrawals from the Depositor, to process such requests, and to transmit funds from the Master Account or Sub-Account pursuant to such requests;
- to maintain appropriate records of the balance in each HSA Account or Sub-Account established hereunder;
- to carry out such other incidental activities as may be necessary or convenient in performing its duties hereunder;

- to obtain data processing, software and related services from its software vendor; and
  - to be compensated for its services as provided herein.
2. Whenever the Depositor desires to make a withdrawal from the HSA Account, the Depositor shall instruct the PSP in writing, at the address indicated below, using the HSA Distribution Order form or such other document as the PSP may from time to time specify.

#### **Article IX - Fees**

1. Depositor agrees to pay to the Custodian fees for services performed under this agreement in an amount specified from time to time in fee schedules published by the Custodian. Such fees may include, but are not limited to, a fee to establish the custodial account, monthly service charges and an annual maintenance fee. The Custodian shall have the right to change such fees at any time but no such change which results in an increase in fees shall become effective without 30 days prior written notice to Depositor. Depositor will be deemed to have accepted such new fees by maintaining the HSA Account as provided herein. All fees may be billed to Depositor or deducted from the custodial account, at the discretion of the Custodian. The Custodian may also impose its established charges for routine bank services such as NSF checks, stop orders, and the like in accordance with its standard fee schedule.

2. Depositor shall also pay any income, transfer and other taxes of any kind that may be levied or assessed upon the custodial account, and all other administrative expenses reasonably incurred by the Custodian in the performance of its duties.

3. The PSP, as compensation for its administrative services, may collect a fee from Depositor, and may collect a fee from the Custodian for the record keeping, administrative and other services it performs in connection with the Master Accounts and Sub-Accounts established in connection herewith. Such fee will be agreed upon by the PSP and the Custodian.

4. Refer to the current publicized fee schedule for fees and charges imposed by the PSP and the Custodian with respect to the HSA Account and for the services to be provided pursuant thereto.

#### **Article X - Records and Reports**

1. The PSP and the Custodian shall keep accurate and detailed records of all contributions, receipts, investments, distributions, disbursements, and all other transactions relating to the custodial account, from the Master Account and from each Sub-Account. Either the PSP or the Custodian shall furnish Depositor or Depositor's beneficiary, where applicable,

periodic written reports containing such information as required by the Internal Revenue Service and reflecting all transactions effected by the Custodian since the period covered by the last report, together with a statement of the assets in the custodial account and the Sub-Account. Unless Depositor files with the Custodian and the PSP a written objection to the report within 30 days after the statement is furnished, the Custodian and the PSP shall be relieved and discharged from all liability to Depositor (including any of Depositor's beneficiaries) with respect to all matters set forth in such report.

2. The PSP shall maintain records as to the account balances in each Sub-Account established pursuant to this Agreement and related agreements it may have with the Custodian, of the names, addresses and tax identification numbers of each Depositor, and such other information as may be appropriate or necessary for it to carry out its obligations hereunder. It shall provide such information to the Custodian from time to time on request for its purposes, and may make such information available to the federal or state bank regulatory agencies having examination or supervisory responsibility over the Custodian or as may be required by law.

#### **Article XI - Resignation or Removal of the Custodian and the PSP**

1. The Custodian may resign as the Custodian hereunder without the consent of Depositor, by providing notice of such resignation 30 days prior to the effective date of the resignation. In the event of a resignation by the Custodian, Depositor shall appoint a qualified successor Custodian. Upon receipt by the Custodian of a written acceptance of such appointment by the successor Custodian, the Custodian shall transfer and pay over to such successor the assets of the custodial account. If after 30 days from notice of resignation, the Custodian has not received written acceptance of such appointment by successor Custodian, the Custodian shall pay or otherwise transfer to the Depositor the assets remaining in the custodial account. The Custodian is authorized, however, to reserve such funds as it deems advisable for payment of any liabilities constituting a charge against the assets of the custodial account or against the Custodian, with any balance of such reserve remaining after payment of all such items to be paid over to the successor Custodian.

2. The PSP may resign and terminate its responsibilities hereunder with 30 days prior notice to Depositor and the Custodian. The PSP shall make appropriate arrangements to assure that the services it provides hereunder are assumed by the Custodian or some other entity reasonably acceptable to the Custodian.

3. Depositor may remove the Custodian as Custodian with respect to the custodial account by providing notice to the Custodian and the PSP 30 days prior to the removal, and upon

the appointment and qualification of a successor Custodian or Trustee. The successor Custodian or Trustee shall assume all rights, powers, privileges, liabilities and duties of the Custodian and the PSP. Upon acceptance of appointment by the successor Custodian or Trustee, the Custodian shall assign, transfer and deliver to the successor all funds held in the custodial account to which such removal relates, and the PSP shall transfer records with respect to the account to the successor. The Custodian is authorized, however, to reserve such funds as it deems advisable for payment of any liabilities constituting a charge against the assets of the custodial account or against the Custodian, with any balance of such reserve remaining after payment of all such items to be paid over to the successor Custodian or Trustee, and the PSP and the Custodian are authorized to retain any fees or expenses owned to them under this agreement or any related agreement by Depositor.

#### **Article XII - Notice**

1. Except as otherwise permitted by the Custodian, all instructions to the Custodian under this agreement must be in writing. Notices to the PSP, in its capacity as administrator and record keeper, must also be in writing. In connection with transactions regarding the Account, the PSP will act as Depositor's agent, and will receive written notices, which it may communicate to the Custodian in written form or electronically in accordance with such procedures and practices as may be established by them. Depositor may authorize an agent to act on behalf of Depositor, provided that such appointment and authorization is provided in writing to the PSP and the Custodian in the form required by the PSP and the Custodian. Any instructions by an authorized agent of Depositor will be binding upon Depositor. Any authorization given by Depositor will remain in effect until the Custodian and the PSP receive written notice of Depositor's revocation of the authorization, or the death of Depositor to the extent that the PSP and the Custodian are notified thereof, whichever occurs first.

2. Any notice, report, payment, distribution or other material required to be delivered by the Custodian or the PSP to Depositor under this agreement, shall be deemed delivered and effective three days after the date mailed by the Custodian or the PSP to Depositor at the Depositor's last address of record as provided by Depositor to the PSP or the Custodian, and neither the PSP nor the Custodian shall be obligated to ascertain the actual address or whereabouts of Depositor.

3. Any notice or instructions required to be delivered by Depositor to the PSP or the Custodian under this agreement shall be deemed delivered when actually received by the PSP or the Custodian.

4. Any notice required or permitted to be given to the PSP or the Custodian under this agreement shall be given to them at

the addresses shown below or such other address as they may notify Depositor, and any notice required or permitted to be given to Depositor under this agreement shall be given to Depositor at the address filed with the PSP and the Custodian from time to time. Notices may be delivered in person or may be sent by United States mail, first class with postage prepaid and properly addressed.

9. This agreement is part of a series of documents and agreements executed by Depositor, the PSP and the Custodian relating to the HSA Account, all of which shall be construed consistently to give effect to the intent of the parties.

10. By executing the HSA Adoption Agreement, the Depositor is bound by the terms and conditions of this agreement.

**Note:** Any other provisions are to be attached on a separate sheet.

### Article XIII - General Provisions

1. Anything contained in this agreement to the contrary notwithstanding, neither Depositor nor any beneficiary of Depositor shall be entitled to use the custodial account or any portion thereof, as security for a loan, nor shall the Custodian or any other person or institution engage in any prohibited transaction, within the meaning of section 4975 of the Code, with respect to any custodial account.

2. Except to the extent otherwise required by law, none of the amounts held in a custodial account shall be subject to the claims of any creditor of Depositor, or any beneficiary of Depositor, nor shall Depositor or any beneficiary have any right to anticipate, sell or pledge, option, encumber or assign any of the benefits, payments or proceeds to which he or she may be entitled under the custodial agreement.

3. If any question arises as to the meaning of any provision of this agreement, then the Custodian shall be authorized to construe or interpret any such provision, and the Custodian's construction and interpretation shall be binding upon Depositor and any beneficiary of Depositor.

4. Throughout this agreement, the singular form includes the plural where applicable.

5. Any provision of this agreement which would disqualify the custodial account as a HSA Account for the purposes of the Code shall be disregarded to the extent necessary to make the custodial account qualify as an HSA Account under the Code.

6. The headings and articles of this agreement are for convenience of reference only, and shall have no substantive effect on provisions of this agreement.

7. The provisions of this agreement shall be construed and interpreted in accordance with the internal laws of the state in which the principal office of the Custodian is located, except to the extent superseded by applicable federal law.

8. Notwithstanding any other articles which may be added or incorporated to this Agreement, the provisions of Articles I through III hereof and this sentence will be controlling. Any additional articles that are not consistent with section 223 of the Code and related regulations will be invalid.

### Signatures

In witness whereof, the parties have executed this agreement effective as of the date executed by the Depositor below.

### Custodian

<b>Custodian</b>	<i>Gateway Bank, F.S.B.</i>
Address	<i>2306 Merced St.</i>
City St. Zip	<i>San Leandro, CA 94577</i>
<b>Authorized Signature</b>	_____
Title	<i>Executive Vice President</i>
Date Signed	<i>January 1st, 2004</i>

### Plan Service Provider

<b>PSP</b>	<i>Benefit Administrators</i>
Address	<i>1009 Oak Hill Road, Third Floor</i>
City St. Zip	<i>Lafayette, CA 94549</i>
<b>Authorized Signature</b>	_____
Title	<i>President</i>
Date Signed	<i>January 1<sup>st</sup>, 2004</i>